

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 477 Session of  
1991

INTRODUCED BY REINARD, HALUSKA, MARSICO, MELIO, GODSHALL, PESCI,  
BIRMELIN, FAIRCHILD, STABACK, FARMER, SCHEETZ, NAILOR, BUSH,  
KENNEY, CIVERA, COLAIZZO, HERSHEY, JOHNSON, MCGEEHAN, COY,  
TULLI, FARGO, SCHULER, NOYE, WOZNIAK, FLEAGLE, CLYMER, BUNT,  
SAURMAN, KING, VROON, GEIST, TIGUE, M. N. WRIGHT, FAJT,  
BILLOW, DEMPSEY, COLAFELLA, BARLEY, CORNELL, CORRIGAN,  
RAYMOND, TRELLO, LEH, MICOZZIE, E. Z. TAYLOR, LaGROTTA,  
BATTISTO, MERRY, S. H. SMITH, NAHILL, SERAFINI, CARLSON,  
TELEK, FLICK, ADOLPH, ARMSTRONG, OLASZ, DeLUCA, SEMMEL AND  
BISHOP, MARCH 11, 1991

REFERRED TO COMMITTEE ON CONSERVATION, MARCH 11, 1991

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 attorney fees.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 2503 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended by adding a paragraph to read:

8 § 2503. Right of participants to receive counsel fees.

9 The following participants shall be entitled to a reasonable  
10 counsel fee as part of the taxable costs of the matter:

11 \* \* \*

12 (11) The prevailing party in an action where the court  
13 makes a final determination that an action or defense was  
14 frivolous or made in bad faith.

1           (i) If a court determines a reasonable counsel fee  
2           should be assessed, it shall allocate the payment among  
3           the offending attorneys and parties as it determines most  
4           just and may charge the amount or any portion to any  
5           offending attorney or party.

6           (ii) The court shall assess a counsel fee if, upon  
7           the motion of a party or the court itself, the court  
8           finds that an attorney or party brought or defended an  
9           action or part of an action that was frivolous or that  
10           was interposed solely for delay or harassment. If the  
11           court finds that an attorney or party unnecessarily  
12           expanded the proceedings by other improper conduct,  
13           including, but not limited to, abuses of civil discovery  
14           procedures, the court shall assess a counsel fee.

15           (iii) No counsel fee shall be assessed if a claim or  
16           defense was asserted by an attorney or party in a good  
17           faith attempt to establish a new theory of law or if,  
18           after filing suit, a voluntary dismissal is filed as to  
19           any claim or action within a reasonable time after the  
20           attorney or party filing the dismissal knew or reasonably  
21           should have known that the party would not prevail on  
22           such claim or action.

23           (iv) No party who is appearing without an attorney  
24           shall be assessed a counsel fee unless the court finds  
25           that the party clearly knew or reasonably should have  
26           known that the action or defense or any part of the  
27           action or defense was frivolous or made in bad faith.  
28           This subparagraph does not apply to an attorney licensed  
29           to practice law in this Commonwealth appearing without an  
30           attorney. In this case, the attorney shall be held to the

standards for attorneys prescribed in this paragraph.

(v) In determining the amount of a cost or a counsel fee award under this paragraph, the court shall exercise its sound discretion. When granting an award of costs and a counsel fee, the court shall specifically set forth the reasons for the award and shall, in determining whether to make the assessment and the amount to be assessed against offending attorneys and parties, consider, among other things, the following factors:

(A) The extent to which an effort was made to determine the validity of an action or claim before the action initiated on the claim was asserted.

(B) The extent of an effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses that were found to be not valid.

(C) The availability of facts to assist the party to determine the validity of a claim or defense.

(D) The relative financial position of the parties involved.

(E) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith.

(F) Whether or not issues of fact, determinative of the validity of a party's claim or defense, were reasonably in conflict.

(G) The extent to which the party prevailed with respect to the amount and number of claims in controversy.

(H) The amount or conditions of any offer of

1           judgment or settlement in relation to the amount or  
2           conditions of the ultimate relief granted by the  
3           court.

4           (I) The extent to which a reasonable effort was  
5           made to determine, prior to the time of filing to a  
6           claim, that all parties sued or joined were proper  
7           parties owing a legally defined duty to another  
8           party.

9           (J) The extent of an effort made, after the  
10          commencement of an action, to reduce the number of  
11          parties in the action.

12          (vi) Nothing in this paragraph shall be construed to  
13          prevent an attorney and a client from negotiating the  
14          actual fee which the client is to pay the attorney.  
15          Nothing in this paragraph is intended to limit the  
16          authority of the court to approve written stipulations  
17          filed with the court or oral stipulations in open court  
18          agreeing to no award of a counsel fee or costs or an  
19          award of a counsel fee or costs in a manner different  
20          than that provided in this paragraph.

21          Section 2. This act shall take effect in 60 days.